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C O N F I D E N T I A L SECTION 01 OF 02 ISTANBUL 000083

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DEPARTMENT FOR EUR/SE

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TAGS: [PHUM](#) [PGOV](#) [PREL](#) [TU](#)

SUBJECT: ECHR RULING SETS PRECEDENT FOR DISPUTED MINORITY  
PROPERTIES IN TURKEY

REF: A. 06 ANKARA 6529

[1](#)B. 06 ANKARA 6593

[1](#)C. 06 ISTANBUL 0524

Classified By: Consul General Deborah K. Jones for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary: The European Court of Human Rights (ECHR) announced on January 10 it had ruled in favor of the Fener Greek Boys' High School Foundation in the latter's application against the GOT regarding the expropriation of two properties. The court ordered Turkey to return the two properties or pay the Foundation 890,000 Euro in compensation plus an additional 20,000 Euro in court costs. Attorneys for the Ecumenical and Armenian Patriarchates are optimistic that this ruling, coupled with changes incorporated in the new Law on Foundations (ref A), foreshadows better days for minority property rights. End summary.

[1](#)2. (C) We met separately with Professor Ata Sakmar, legal advisor to Ecumenical Patriarch Bartholomew I, and Luiz Bakar an attorney for the Armenian Patriarch of Istanbul and all of Turkey Mesrob II, to discuss the ECHR's ruling and its implications for other minority property disputes in Turkey. The two Patriarchates were not parties to the ECHR case but, with their own property dispute cases pending before the ECHR and many more pending in domestic courts, they do have a stake in the Court's decision.

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How Did it Come to This?  
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[1](#)3. (C) Sakmar explained that in 1974 (contemporaneous with the rapidly deteriorating situation in Cyprus) the Turkish High Court made a "political decision" that was not compatible with existing laws. This decision made minority foundations ineligible to acquire new properties and was retroactively applied to 1936 when minority foundations were asked to declare their properties in a registry. The Greek community in particular was affected by this decision because as its members began to emigrate en masse (especially after anti-Greek riots in Istanbul during September 1955), many properties were donated to charity foundations. Subsequent to the 1974 ruling, civil courts began to annul the land registries of minority properties acquired after 1936 and re-registered the properties in the name of the public treasury, which could then sell the properties to third parties.

[1](#)4. (C) Such was the case for the Fener Greek Boys High School Foundation properties that were the subject of the recent ECHR ruling -- a building in the Beyoglu district of Istanbul and a plot of land in the Kadikoy neighborhood. The properties were donated to the Foundation in 1952 and 1958 and after decades of bureaucratic wrangling stemming from the

1974 decision their respective deeds were canceled in 1996. According to Sakmar, the properties were later sold at public auction to third parties. After unsuccessfully suing the government for compensation in domestic courts, the Foundation brought the case to the ECHR claiming the GOT had violated its rights to private property as well as freedom from discrimination.

15. (C) In its decision, the ECHR acquitted the GOT of discrimination but ruled it had violated the Foundation's right to property. Sakmar told us that rather than pay the 910,000 Euro, the GOT could seek a compromise with the Foundation, but he believed this was unlikely and that instead it would appeal the ruling to the ECHR's Grand Chamber for a final and enforceable decision. He predicted that should this happen, the chances that the decision would be overturned were slim.

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Where do We Go From Here?  
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16. (C) Sakmar estimated 900 to 1000 minority properties were expropriated by the State under similar circumstances. He noted that while the ECHR ruling could be used as a precedent for decisions relating to any existing or future property disputes, the new Law on Foundations (ref A), currently under parliamentary review after being passed by Parliament in November 2006 and subsequently vetoed by President Sezer (ref B), would go a long way toward solving such problems. Specifically, the 2006 draft Law on Foundations provides that properties confiscated under the 1974 high court decision and still registered in the name of the Treasury or other public entity would be returned. The draft Foundations law,

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however, does not provide compensation to minority foundations in cases where properties have been sold to third parties.

17. (C) According to Sakmar, the Justice and Development Party (AKP)-led government invited attorneys for the minority communities to provide proposals for the new Law on Foundations, and had accepted many of the attorneys' proposals before backtracking due to public pressure. He characterized the AKP as more "democratic and human" than other parties -- especially the opposition Republican People's Party (CHP) which he opined was acting like "an extreme right party." Sakmar believes the ECHR decision will provide political cover for the government to follow through with its original intentions. Underscoring his point, Sakmar noted that Deputy Prime Minister Mehmet Ali Sahin stated the ECHR decision would oblige the GOT to pay large amounts of compensation for expropriated properties and, as a result, the government would look into incorporating a compensation clause in the new Foundations Law.

18. (C) Bakar shared with us her optimism regarding a pending ECHR decision on a similar case brought to the Court by the Armenian Hospital Foundation. She explained that because of identical charges and similar property expropriation circumstances, the case proceedings were originally conducted concurrently with those associated with the Fener Greek Boys' High School Foundation's case. Differences in procedural preferences later caused the cases to be separated but Bakar sees no reason why the ECHR would rule differently and expects a decision within the next three months. Like Sakmar, she believes a new Law on Foundations would obligate the government to return properties currently under its control. However she does not think the ECHR decision will lead Parliament to revise the law to include a compensation clause. Rather, Bakar told us Parliament will likely re-pass the draft in its current form.

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Is Something Rotten in the Danistay?

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¶9. (C) Sakmar, who represents the Ecumenical Patriarchate in the critical Buyukada Orphanage suit (ref C) pending before the ECHR, told us he expects the Court will announce its decision in that case within the coming months. Though the ECHR decision in the Fener Greek Boys' High School Foundation's case is not likely to affect the outcome of the Buyukada Orphanage litigation, the latter is critical to the Patriarchate's GOT-disputed claim to juridical personality. Speaking off the record, Sakmar all but accused the Turkish High Administrative Court (Danistay) of succumbing to outside pressure when it ruled the property was mistakenly deeded to the Patriarchate and should be registered in the name of an expropriated Greek Foundation.

¶10. (C) Comment: Despite the advances the draft Law on Foundations would have made for minority property rights in Turkey, many of our minority community contacts were disappointed that it did not go further in providing compensation for properties which had been sold to third parties. The ECHR decision in the Fener Greek Boys' High School Foundation case could prompt the GOT to fill that gap.

Even if Bakar is correct in thinking Parliament will not revise the draft to include a compensation clause, the ECHR decision will certainly give attorneys representing minority property rights added ammunition for their arguments in domestic courts. Deputy Prime Minister Sahin's comments suggest the GOT may have come to this realization, as well. End comment.

JONES